

SEP 3 1976

MICHAEL RODAK, JR., CLERK

In the Supreme Court of the  
United States

OCTOBER TERM, 1976

No. 76-242

WILLARD M. NOBLE and ETTA M. NOBLE,  
*Petitioners,*

vs.

McCLATCHY NEWSPAPERS, a corporation;  
ELEANOR McCLATCHY, an individual;  
WALTER P. JONES, an individual; C. K. McCLATCHY,  
an individual; BYRON CONKLIN, an individual;  
CARLO BUA, an individual,  
*Respondents.*

**Respondents' Brief Re Petition  
for Writ of Certiorari**

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Petitioners seek a writ of certiorari to review the identical judgment of which McClatchy Newspapers,<sup>1</sup> the respondent here, seeks review as petitioner in No. 76-86.

Petitioners here seek review of additional questions, but those questions relate to the supposed facts of a particular case and, unlike the questions stated in the petition in No. 76-86, present no matters of general importance.

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1. And its officers and employees Eleanor McClatchy, C.K. McClatchy, Byron Conklin and Carlo Bua.

The claim which the petitioners here discuss was recognized by the court below to be a bit of verbalistic juggling. The petition dwells on an alleged "denial of a right to sell a business," but the "business" rested entirely upon a contract with McClatchy terminable by its express provisions on thirty-days' notice by either party. McClatchy did not "deny" Noble a "right to sell a business;" all it did was to exercise its contractual right to terminate the contract. With the contract terminated, there was simply no "businsss" which Noble possessed to sell or which anyone would buy.

Another of the claims presented by Noble was that McClatchy's termination of the contract violated the antitrust laws, and that issue is involved in the petition in No. 76-86. The court below recognized that the controversy centered on that claim. As the court said, if the termination did not violate the antitrust laws, there was no business to sell and therefore no damages from any inability to sell a business, but, on the other hand, if the termination did violate the antitrust laws, Noble's recovery rested there, and to permit recovery under the rubric of "denial of a right to sell a business" would be merely duplicative.

The discussion of the petition is wholly at sea in irrelevancy. Largely it argues about the role of a jury in a "rule of reason" antitrust case. But as pointed out in the petition in No. 76-86, the court below held that the termination claim had to be determined upon a *per se* basis.

### CONCLUSION

We agree that the judgment of the court below should be reviewed, but we respectfully submit that the writ should be limited to questions presented in the petition in No. 76-86, and that it should not encompass the questions sought to be presented in the instant petition.

Dated: San Francisco, California,

August 31, 1976.

Respectfully submitted

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